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20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF NORTHERN CALIFORNIA**  
22 **SAN FRANCISCO DIVISION**

23 COURTNEY MCMILLIAN and  
24 RONALD COOPER, on behalf of  
25 themselves and all others similarly  
26 situated,

27 Plaintiffs,

28 v.

X CORP., f/k/a/ TWITTER, INC.,  
X HOLDINGS, ELON MUSK, DOES,

Defendants.

Case No. 3:23-cv-03461-TLT-RMI-SK

**RESPONSE TO QUESTIONS  
FOR THE PARTIES RE: ECF  
148, 149**

Judge: Trina L. Thompson  
Magistrate Judge (Discovery):  
Robert Illman  
Magistrate Judge (Settlement):  
Sallie Kim

Hearing: February 24, 2026, 2 pm

1 The undersigned counsel hereby submits a response to this Court’s Order to  
2 “discuss whether the Parties request that the Court defer ruling on the motion to  
3 withdraw until the Ninth Circuit rules on the motion to intervene.” Dkt. 150. The  
4 undersigned counsel agrees with this Court’s suggestion that it is appropriate to hold  
5 the motion to withdraw in abeyance until the Ninth Circuit rules on the pending  
6 motions to intervene. Doing so will enable the Court to assess whether granting the  
7 motion to withdraw will prejudice potential class members. Further, holding the  
8 motion in abeyance will not delay the resolution of this case or cause prejudice.  
9

11 **A. Prejudice to Class Members Will be Mitigated if Intervention is**  
12 **Allowed.**

13 Delaying a ruling on the motion to withdraw until after the Ninth Circuit rules  
14 on the pending motions to intervene, Dkts. 58.1, 73.1, *McMillian, et al. v. X Corp.,*  
15 *et al.*, No. 24-5045 (9th Cir.), will enable this Court to assess whether withdrawal of  
16 the undersigned counsel will prejudice absent class members. If the Ninth Circuit  
17 allows Proposed Intervenors to represent the absent class members, it will mitigate  
18 any prejudice to class members caused by granting withdrawal here. *See generally*  
19 Dkts. 58.1, 73.1, 83.1, No. 24-5045 (9th Cir.).  
20

21 As this Court has noted, potential prejudice to absent class members is a  
22 relevant consideration in assessing withdrawal in cases with class claims. Dkt. 150  
23 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003) (“Class counsel  
24 ultimately owe their fiduciary responsibility to the class as a whole.”); *In re*  
25  
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Case No. 3:23-cv-03461-TLT-RMI-SK

**RESPONSE TO QUESTIONS FOR THE PARTIES RE: ECF 148, 149**

1 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (“Prior to  
 2 formal class certification, there is an even greater potential for a breach of fiduciary  
 3 duty owed the class during settlement.”)). This is true even prior to class  
 4 certification, contrary to Plaintiffs’ repeated assertions. *Id.*

6 Regardless, a determination on the scope of Plaintiffs’ fiduciary duties prior  
 7 to certification is not a determination this Court must make now, given that the issue  
 8 of class member interests in this case (and whether they are better served by  
 9 Plaintiffs’ proposed notice or intervention<sup>1</sup>) is before the Ninth Circuit. *See* Exhibit  
 10 A (Proposed Intervenors’ Response to Appellants’ Motion to Remand, disputing  
 11 before the Ninth Circuit that Plaintiffs’ proposed notice is in the interests of class  
 12 members).

15 **B. Holding the Motion to Withdraw in Abeyance Will Not Cause Delay.**

17 Holding the motion to withdraw in abeyance will not cause delay because

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20 <sup>1</sup> In an abundance of caution in the event that the motions to intervene were not  
 21 granted, Proposed Intervenors Ye and Kurtz filed a narrower complaint specifically  
 22 to preserve the fiduciary breach claims of the ERISA class (for which the statute of  
 23 limitations can be as short as three years, 29 U.S.C. § 1113) now that those claims  
 24 are no longer being preserved by Ms. McMillian and Mr. Cooper. While intervention  
 25 in the current case would further class member interests and the interests of justice  
 26 and judicial efficiency, *see* Dkt. 82.1 at 6–8, No. 24-5045 (9th Cir.) (Proposed  
 27 Intervenors’ Response to Appellants’ Motion to Voluntarily Dismiss Appeal), if  
 28 intervention is denied, the undersigned would move for consideration of whether the  
 newly filed case is related to this one. *See* Complaint ¶ 29, n.2, Dkt. 1, *Ye, et al. v. Musk, et al.*, No. 3:25-cv-09501-PHK (N.D. Cal. Nov. 4, 2025) (noting *Ye* Plaintiffs would so move).

determination of this motion is not a precursor or prerequisite to any action pending in this case. There are no outstanding issues before this Court that will be delayed by waiting to decide on withdrawal.

Furthermore, any delay that may be caused by waiting to decide this motion would be minimal, given that briefing on the intervention motions is ongoing and is currently scheduled to be completed by December 1, 2025.<sup>2</sup>

**C. Holding the Motion to Withdraw in Abeyance Will Not Prejudice Plaintiffs.**

Holding this motion in abeyance also would not prejudice Ms. McMillian and Mr. Cooper. The undersigned counsel is not communicating with them or acting as their representative in any individual capacities. Ms. McMillian and Mr. Cooper are pursuing individual arbitrations with their new counsel and have not sought relief from this Court.

DATED: November 20, 2025

Respectfully submitted,

Sanford Heisler Sharp McKnight, LLP

By: /s/ Kate Mueting

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(admitted *pro hac vice*)

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<sup>2</sup> Responses to the intervention motions were filed on November 17 and replies are due November 24. Defendants-Appellees may file a separate response to the second intervention motion, and this response would be due November 24. Proposed Intervenors' reply would be due by December 1.

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**RESPONSE TO QUESTIONS FOR THE PARTIES RE: ECF 148, 149**